May 3, 2018

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Republic Services, Inc.
ATTN: Managing Agent
5960 El Camino Real
Carlsbad, California 92008

Palomar Transfer Station Inc
ATTN: Managing Agent
5960 El Camino Real
Carlsbad, California 92008

Coast Waste Management Inc
ATTN: Managing Agent
5960 El Camino Real
Carlsbad, California 92008

CT Corporation System
Registered agent for:
Republic Services, Inc.,
Palomar Transfer Station Inc, and
Coast Waste Management Inc
818 West Seventh Street, Suite 930
Los Angeles, California 90017

MAY 09 2018

Re: Notice of Violation and Intent to File Suit Under the Clean Water Act

To the Above-Listed Recipients:

Please accept this letter on behalf of San Diego Coastkeeper ("Coastkeeper") and Coastal Environmental Rights Foundation ("CERF") regarding violations of the Clean Water Act[1] and California's Storm Water Permit[2] occurring at: 5960 El Camino Real, Carlsbad, California 92008 ("Palomar Transfer Station", "Coast Waste Mgt Inc", "The Palomar Transfer Station, Inc. and Coast Waste Management Facility", or "Facility"). The purpose of this letter is to put Republic Services, Inc. ("Republic Services"), Palomar Transfer Station Inc. ("Palomar"), and Coast Waste Management Inc ("CWM") (collectively "Facility Owners and/or Operators"), as the owner(s) and/or operator(s) of the Facility, on notice of the violations of the Storm Water Permit occurring at the Facility, including, but not limited to, discharges of polluted storm water from the Facility into local surface waters. Violations of the Storm Water Permit are violations of the Clean Water Act. As explained below, Facility Owners and/or Operators are liable for violations of the Storm Water Permit and the Clean Water Act.

[1] Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*
[2] National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, Order No. 97-03-DWQ, as amended by Order No. 2014-0057-DWQ.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intention to file suit. Notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, the Executive Officer of the water pollution control agency in the State in which the violations occur, and, if the alleged violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1). This notice letter ("Notice Letter") is being sent to you as the responsible owner(s) and/or operator(s) of the Facility, or as the registered agent for the owner(s) and/or operator(s). This Notice Letter is issued pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Clean Water Act to inform Facility Owners and/or Operators that Coastkeeper and CERF intend to file a federal enforcement action against Facility Owners and/or Operators for violations of the Storm Water Permit and the Clean Water Act sixty (60) days from the date of this Notice Letter.

1. BACKGROUND

1.1. San Diego Coastkeeper and Coastal Environmental Rights Foundation.

San Diego Coastkeeper is a non-profit public benefit corporation organized under the laws of the State of California with its office at 2825 Dewey Road, Suite 207, San Diego, California 92106. Founded in 1995, San Diego Coastkeeper has approximately 2,000 members who live and/or recreate in and around San Diego County watersheds.

Coastkeeper is dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of San Diego County watersheds. To further these goals, Coastkeeper actively seeks federal and state agency implementation of the Clean Water Act, and, where necessary, directly initiates enforcement actions on behalf of themselves and their members.

CERF is a non-profit public benefit corporation organized under the laws of the State of California with its main office in Encinitas, CA. CERF is dedicated to the preservation, protection, and defense of the environment, the wildlife, and the natural resources of the California Coast. CERF's mailing address is 1140 S. Coast Highway 101, Encinitas, CA 92024.

Members of Coastkeeper and CERF enjoy the waters that the Facility discharges into, including Canyon De Las Encinas Creek, Agua Hedionda Creek, Agua Hedionda Lagoon, and the Pacific Ocean (collectively "Receiving Waters"). Members of Coastkeeper and CERF use the Receiving Waters to swim, boat, kayak, bird watch, view wildlife, hike, bike, walk, and/or run. Additionally, members of Coastkeeper and CERF use the Receiving Waters to engage in scientific study through pollution and habitat monitoring and restoration activities. The discharges of pollutants from the Facility

impair each of these uses. Discharges of polluted storm water from the Facility are ongoing and continuous. Thus, the interests of Coastkeeper's and CERF's members have been, are being, and will continue to be adversely affected by Facility Owners and/or Operators' failure to comply with the Clean Water Act and the Storm Water Permit.

1.2. The Owners and/or Operators of the Facility.

Information available to Coastkeeper and CERF indicates that Republic Services, Palomar, and CWM are owner(s) and/or operator(s) of the Facility and have been for at least the past five years. Republic Services, Palomar, and CWM are collectively referred to as the "Facility Owners and/or Operators." Information available to Coastkeeper and CERF indicates that: (1) Republic Services, Inc. is an active Delaware corporation and its registered agent is CT Corporation System, 818 West Seventh Street, Suite 930, Los Angeles, California 90017; (2) Palomar Transfer Station Inc is an active California corporation and its registered agent is also CT Corporation System, 818 West Seventh Street, Suite 930, Los Angeles, California 90017; and (3) Coast Waste Management Inc is an active California corporation and its registered agent is likewise CT Corporation System, 818 West Seventh Street, Suite 930, Los Angeles, California 90017.

The Facility Owners and/or Operators have violated and continue to violate the procedural and substantive terms of the Storm Water Permit including, but not limited to, the illegal discharge of pollutants from the Facility into local surface waters. As explained herein, the Facility Owners and/or Operators are liable for violations of the Storm Water Permit and the Clean Water Act.

1.3. The Facility's Storm Water Permit Coverage.

Certain classified facilities that discharge storm water associated with industrial activity are required to apply for coverage under the Storm Water Permit by submitting a Notice of Intent ("NOI") to the State Water Resources Control Board ("State Board") to obtain Storm Water Permit coverage. Information available to Coastkeeper and CERF indicates that Palomar Transfer Station first obtained Storm Water Permit coverage in 2003. Information available to Coastkeeper and CERF indicates that Coast Waste Mgt Inc first obtained Storm Water Permit coverage in 1998. Palomar Transfer Station submitted its most recent NOI on May 4, 2015 ("Palomar 2015 NOI"). Coast Waste Mgt Inc submitted its most recent NOI on June 3, 2015 ("CWM 2015 NOI"). Coastkeeper and CERF obtained the Palomar 2015 NOI and CWM 2015 NOI from California's online Storm Water Multiple Application & Reporting Tracking System ("SMARTS") database. The Palomar 2015 NOI lists the Facility Waste Discharge Identification ("WDID") number as 9 37I018454. The CWM 2015 NOI lists the Facility Waste Discharge Identification ("WDID") number as 9 37I014374. The Palomar 2015 NOI identifies the operator of Palomar Transfer Station as "Palomar Transfer Station Inc" and the Facility information as "Palomar Transfer Station at 5960 El Camino Real Carlsbad CA 92008."

The CWM 2015 NOI identifies the operator of Coast Waste Mgt Inc as "Coast Waste Management Inc" and the Facility information as "Coast Waste Mgt Inc at 5960 El Camino Real Carlsbad CA 92008." The Facility's December 2017 Level 2 Action Plan, which Coastkeeper and CERF obtained from the SMARTS database, identifies the Facility owner as "Republic Services, Inc." and the Facility information as "The Palomar Transfer Station, Inc. and Coast Waste Management facility (the facility)."

The Palomar 2015 NOI states that the Facility is 7 acres, with 7 acres of industrial area exposed to storm water, but does not indicate what percent of the site is impervious. The Palomar Transfer Station Storm Water Pollution Prevention Plan dated November 2016 and signed on March 3, 2017, ("Palomar 2016 SWPPP"), which Coastkeeper and CERF obtained from the SMARTS database, states that the Facility is approximately 11 acres. The Palomar 2016 SWPPP states that the "amount of pervious surface (e.g., paved surfaces, structures) [sic] at the PTSI is greater than 90 percent." Palomar Transfer Station's previous SWPPP, dated November 2015 and signed on November 12, 2015 ("Palomar 2015 SWPPP"), which Coastkeeper and CERF obtained from the SMARTS database, lists the same site size, but lists the site as over 90 percent *impervious*. The CWM 2015 NOI states that the Facility is 11 acres, with 11 acres of industrial area exposed to storm water, and only 1 percent impervious. The Coast Waste Mgt Inc Storm Water Pollution Prevention Plan dated December 2016 ("CWM 2016 SWPPP"), which Coastkeeper and CERF obtained from the SMARTS database, states that the Facility is approximately 11 acres and 70% impervious. Coast Waste Mgt Inc's previous SWPPP, dated November 2015 ("CWM 2015 SWPPP") lists the same size and percent impervious. Thus, information available to Coastkeeper and CERF indicates that the Facility Owners and/or Operators have failed to file accurate NOIs. *See* 1997 Permit, Attachment 3, Section III. *See also* 2015 Permit Section I.A.17 and Attachment D.

The Palomar 2015 NOI, and the Palomar 2016/2017 Annual Report, list the Standard Industrial Classification ("SIC") code for the Facility as 4212 (Local Trucking Without Storage). Section 2.1.2 of the Palomar 2016 SWPPP also lists the SIC code as 4212. The CWM 2015 NOI, and the CWM 2016/2017 Annual Report, list the Standard Industrial Classification ("SIC") codes for the Facility as 4212 (Local Trucking Without Storage) and 4214 (Local Trucking with Storage). Section 1.0 of the CWM 2016 SWPPP lists the primary SIC code as 4212 and the secondary SIC code as 4214. Information available to Coastkeeper and CERF, including the CWM 2016 SWPPP and Palomar 2016 SWPPP describing vehicle and equipment maintenance and recycled materials processing and storage at the Facility, indicates that SIC code 4231 (Terminal & Joint Terminal Maintenance Facilities for Motor Freight Transportation) and SIC code 4953 (Refuse Systems) also apply to the Facility.

SIC code 4953 facilities must obtain Storm Water Permit coverage for the entire facility. For facilities classified as SIC Code 4212, the Storm Water Permit requires permit coverage for "vehicle maintenance shops, equipment cleaning operations, or airport deicing operations." 1997 Storm Water Permit, Attachment 1. The Storm Water

Permit regulates the portions of the facility which are used for "vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication) or other operations identified herein that are associated with industrial activity." 1997 Storm Water Permit Attachment 1; *see also* Attachment 4 (stating that "storm water associated with industrial activity" includes storm water discharges from material handling activities and storage areas for material handling equipment). Coastkeeper and CERF put the Facility Owners and/or Operators on notice that one or more of these regulated activities is conducted at locations throughout the entire Facility, and thus the entire Facility requires Storm Water Permit coverage. In addition, even if the regulated industrial activities are not occurring throughout the entire Facility at all times, under the Storm Water Permit's definition of "storm water associated with industrial activities" and explanation of material handling activities, since no best management practices ("BMPs") or other controls exist to separate the storm water flows from portions of the Facility where non-regulated activities may occur from storm water flows from the regulated industrial activities, storm water at the Facility commingles and thus all storm water discharges from the Facility are regulated under the Storm Water Permit.

1.4. Storm Water Pollution and the Waters Receiving the Facility's Discharges.

With every significant rainfall event millions of gallons of polluted storm water originating from industrial operations such as the Facility pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and aquatic dependent wildlife. These contaminated discharges can and must be controlled for the ecosystem to regain its health.

Polluted discharges from industrial facilities such as the Facility contain pollutants such as: total suspended solids ("TSS"); specific conductance ("SC"); heavy metals (such as copper and iron); pathogens, bacteria (such as E. coli); oil and grease ("O&G"); and hydraulic fluids, among others. *See* Palomar 2016 SWPPP; *see also* Exhibit 1. Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.[3] Discharges of polluted storm water pose carcinogenic and reproductive toxicity threats to the public and adversely affect the aquatic environment.

The Receiving Waters that the Facility discharges into are ecologically sensitive areas. Although pollution and habitat destruction have drastically diminished once-abundant and varied fisheries, the Receiving Waters are still essential habitat for dozens of fish and bird species as well as invertebrate species. The Agua Hedionda Lagoon is a designated Ecological Reserve that provides critical migrating waterfowl habitat and nesting sites for sensitive bird species, contributes to coastal fisheries replenishment by

[3] Health & Saf. Code §§ 25249.5 - 25249.1.

providing nursery habitat for young fish, and generally protects a tremendous diversity of plant and animal species.[4] Storm water and non-storm water contaminated with sediment, heavy metals, and other pollutants harm the special biological significance of the Receiving Waters. Discharges of polluted storm water and non-storm water to the Receiving Waters pose bacterial, carcinogenic, and reproductive threats to the public and adversely affect the aquatic environment.

The polluted discharges from the Facility also harm the special aesthetic and recreational significance that the Receiving Waters have for people in the surrounding communities, including Coastkeeper's and CERF's members. The public's use of the Receiving Waters for water contact sports exposes people to bacteria, toxic metals, and other contaminants in storm water and non-storm water discharges. Non-contact recreational and aesthetic opportunities, such as wildlife observation, are also impaired by polluted discharges to these waters

The California Regional Water Quality Control Board, San Diego Region, ("Regional Board") issued the *Water Quality Control Plan for the San Diego Basin* ("Basin Plan"). The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for Canyon De Las Encinas Stream downstream of the point at which it receives storm water discharges[5] from the Facility include: Non-Contact Water Recreation; Warm Freshwater Habitat; and Wildlife Habitat. Canyon De Las Encinas Stream also has a Potential Beneficial Use as Water Contact Recreation. The Beneficial Uses for Agua Hedionda Creek downstream of the point at which it receives storm water discharges from the Facility include: Water Contact Recreation; Non-Contact Water Recreation; Warm Freshwater Habitat; Wildlife Habitat; Preservation of Biological Habitats of Special Significance; Municipal and Domestic Supply; Agricultural Supply; and Industrial Service Supply. The Beneficial Uses of Agua Hedionda Lagoon are: Industrial Service Supply; Water Contact Recreation; Non-Contact Water Recreation; Commercial and Sport Fishing; Aquaculture; Estuarine Habitat; Marine Habitat; Wildlife Habitat; Preservation of Biological Habitats of Special Significance; Rare, Threatened, or Endangered Species; Migration of Aquatic Organisms; Spawning, Reproduction, and/or Early Development; and Shellfish Harvesting.

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[4] CA Code of Regulations, Title 14, section 630. CA Dept of Fish and Wildlife description, found at: https://www.wildlife.ca.gov/Lands/Places-to-Visit/Agua-Hedionda-Lagoon-ER

[5] The CWM 2015 NOI lists the receiving water as Agua Hedionda Creek. The Palomar 2015 NOI lists the receiving water as Canyon de las Encinas Stream. However, according to Section 3.3 of the CWM 2016 SWPPP, "Stormwater from the adjoining Republic facility [i.e. Palomar Transfer Station building] comingles with the stormwater from the CWM facility and primarily discharges from a Corrugated Metal Pipe outfall onto southern side of the CWM property." Also, the Palomar 2016 SWPPP states that, "The nearest impaired waterbody is Agua Hedionda Creek." Since Palomar's property is completely enveloped by CWM's property, and since all of Palomar's storm water enters CWM property and comingles with CWM storm water before discharging from the site, we dispute the accuracy of the Palomar 2015 NOI's receiving water designation. However, to the extent that Canyon De Las Encinas Stream does receive discharges from the site, these are its beneficial uses.

According to the 2012 303(d) List of Impaired Water Bodies, Agua Hedionda Creek is impaired for enterococcus, fecal coliform, manganese, phosphorus, selenium, total dissolved solids, total nitrogen (as N), and toxicity.[6] Polluted discharges from industrial sites, such as the Facility, contribute to the degradation of these already impaired surface waters and aquatic-dependent wildlife.

2. THE FACILITY AND RELATED DISCHARGES OF POLLUTANTS

2.1. The Facility Site Description and Industrial Activities.

Information available to Coastkeeper and CERF indicates that the Facility primarily provides waste and recyclable material pickup, processing, storage, and handling, as well as support services for Republic Services. Section 2.1.2 of the Palomar 2016 SWPPP states that the following specific industrial activities take place at the Facility: "Waste Transfer, Recycling, Vehicle and Equipment Maintenance, Vehicle and Equipment Fueling, Container Maintenance." According to Section 3.2 of the CWM 2016 SWPPP,

> "The facility includes one building, the main building, various storage areas, and parking areas. The main building is on the eastern portion of the facility and covers approximately 56,000 square feet. CWM occupies only a portion of the main building and shares the remaining area with Republic Services Inc. (Republic). The activities conducted by CWM inside the main building include administrative offices (western portion), collection maintenance (northern-central portion), welding (southern), bin container painting (southern) and container repair activities (southern). The northeastern portion of the main building also houses Republic's transfer operations. The northern portion of the facility is an unpaved collection vehicle parking area and the western portion of the facility is used as an unpaved vehicle parking area. A recyclables buyback center and household hazardous waste drop off center is located on the western portion of the facility. Bins and containers are stored on the unpaved area on the southwestern portion of the facility. Collection vehicle and container washing activities are conducted on a wash rack located on the southern portion of the facility. Vehicle fueling is conducted on the southeastern portion of the facility."

The areas of industrial activity at the Facility include a transfer building and area, recyclables storage area, vehicle maintenance area, bin storage area, truck maintenance area, bin repair area, bin wash area, truck wash area, vehicle and truck fueling areas, and parking areas.

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[6] 2012 Integrated Report – All Assessed Waters, *available at http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml* (last accessed on March 1, 2018.)

Information available to Coastkeeper and CERF indicates that the industrial activities at the Facility include but are not limited to: receiving solid waste, green waste, and recyclable materials from off site; unloading solid waste, green waste, and recyclables materials; handling of solid waste, green waste, and recyclables materials; depositing, loading, and unloading municipal solid waste into trucks or containers; hazardous materials handling and storage; recyclables staging areas and storage; vehicle and equipment fueling, maintenance, repair, washing, and storage; bin maintenance, welding, washing, and storage; vehicle fueling, maintenance, and washing; outdoor materials storage; and parking. Information available to Coastkeeper and CERF indicates that these activities occur throughout the Facility. *See* 2016 Palomar SWPPP.

Information available to Coastkeeper and CERF indicates that storage, repair, fueling, and cleaning of vehicles, bins, and equipment; storage, handling, and management of materials associated with waste storage and transfer; and other industrial activities occur throughout the Facility outdoors without adequate cover to prevent storm water and non-storm water exposure to pollutant sources, and without secondary containment or other adequate treatment measures to prevent polluted storm water and non-storm water from discharging from the facility. Further, information available to Coastkeeper and CERF indicates that the pollutants associated with the Facility have been and continue to be tracked throughout the entire site, where they accumulate at the storm water discharge points and the driveways leading to Orion Road. This results in trucks and vehicles tracking trash, recyclables, sediment, dirt, O&G, metal particles, and other pollutants off-site. Also, according to Section 3.3 of the CWM 2016 SWPPP, "Stormwater from the adjoining Republic facility comingles with the stormwater from the CWM facility and primarily discharges from a Corrugated Metal Pipe outfall onto southern side of the CWM property." The resulting illegal discharges of polluted storm water and non-storm water impact Coastkeeper and CERF's members' use and enjoyment of the Receiving Waters by degrading the quality of those waters, and by posing risks to human health and aquatic life.

2.2. <u>Pollutants and Pollutant Sources Related to the Facility's Industrial Activities</u>.

The pollutants associated with industrial activities at the Facility include, but are not limited to: pH affecting substances; pathogens including coliform and enterococcus bacteria; metals such as iron and copper; TSS; gasoline and diesel fuels; fuel additives; coolants; antifreeze; transmission fluid; hydraulic fluid; waste oil; trash; nitrogen; phosphorus; and O&G. The Facility's SWPPPs do not contain a list or adequate assessment of all potential pollutants at the Facility. *See* Palomar 2016 SWPP; *see also* Exhibit 1.

Information available to Coastkeeper and CERF indicates that the Facility Owners and/or Operators have not properly developed and/or implemented the required

BMPs to address pollutant sources and contaminated discharges. BMPs are necessary at the Facility to prevent the exposure of pollutants to precipitation and the subsequent discharge of polluted storm water from the Facility during rain events. Consequently, during rain events storm water carries pollutants from the Facility's main building, recyclables storage area, metal and household hazardous materials storage areas, vehicle maintenance area, bin storage area, truck maintenance area, bin repair area, bin wash area, truck wash area, vehicle and truck fueling areas, parking areas, and other areas where regulated industrial operations occur into the Receiving Waters, in violation of the Storm Water Permit.

The Facility Owners and/or Operators' failure to develop and/or implement required BMPs also results in prohibited discharges of non-storm water in violation of the Storm Water Permit and the Clean Water Act. These illegal discharges of polluted storm and non-storm water negatively impact Coastkeeper and CERF's members' use and enjoyment of the Receiving Waters by degrading the quality of the Receiving Waters and by posing risks to human health and aquatic life.

2.3. Facility Storm Water Flow and Discharge Locations.

In the Palomar 2016 SWPPP, the Facility Owners and/or Operators report that the Facility consists of five drainage areas: Drainage Area 1 ("DA1", which drains south and west toward SW-1 and then through a storm drain pipe towards a curb inlet on Orion Road); Drainage Area 2 ("DA2", which drains most of the main building and the area around it, directing the flow towards SW-2 and then through a storm drain pipe that discharges directly to the Carlsbad Oaks North Habitat Conservation Area to the south); Drainage Area 3 ("DA3", which drains east towards SW-3 and west into a trench drain and small basin (Drainage Basin 2), then via a subsurface pipe and overflow trench drain towards SW-3, then through a storm drain pipe that discharges directly to the Carlsbad Oaks North Habitat Conservation Area to the south); Drainage Area 4 ("DA4", which drains south towards a vegetated treatment swale (Drainage Basin 1) that discharges into Drainage Basin 2; and Drainage Area 5 ("DA5", which is stated to be non-industrial and which drains south to an unsampled curb inlet on Orion Road).

The Facility is bordered by Faraday Avenue to the north and Orion Avenue to the west. The points of egress/ingress to the facility include four (4) driveways leading to Orion Avenue, none of which is sampled. The southern two driveways are fitted with trench drains that flow towards Drainage Basin 1 and Drainage Basin 2, but the northern two driveways are not. The northernmost driveway leads directly to DA1, an area of industrial activity, and there is no trench drain or cattle grate to prevent run-in and run-off or track-in and track-out of pollutants to and from DA1 via this driveway. CWM reports in Section 3.3 of the 2016 CWM SWPPP that:

> The southwestern corner of the unpaved collection vehicle parking area and a portion of the paved driveway sheet flow to a catch basin with CDS unit and

discharges off-site (SW-1). A small portion of public access road sheet flows west and discharges off-site via sheet flow.

Discharges from the Facility via SW-2 and SW-3 flow directly into the Carlsbad Oaks North Habitat Conservation Area and into the Receiving Waters. Discharges from the Facility via SW-1 and the driveways flow into the City of Carlsbad storm drain system. After the storm water enters the storm drains it is discharged to the Receiving Waters.

3. VIOLATIONS OF THE CLEAN WATER ACT AND THE STORM WATER PERMIT

In California, any person who discharges storm water associated with certain industrial activity must comply with the terms of the Storm Water Permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1).

Between 1997 and June 30, 2015, the Storm Water Permit in effect was Order No. 97-03-DWQ, which Coastkeeper and CERF refer to as the "1997 Permit." On July 1, 2015, pursuant to Order No. 2014-0057-DWQ the Storm Water Permit was reissued, which Coastkeeper and CERF refer to as the "2015 Permit." As explained below, the 2015 Permit includes terms that are as stringent or more stringent than the 1997 Permit. Accordingly, the Facility Owners and/or Operators are liable for violations of the 1997 Permit and ongoing violations of the 2015 Permit, and civil penalties and injunctive relief are available remedies. *See Illinois v. Outboard Marine, Inc.*, 680 F.2d 473, 480-81 (7th Cir. 1982) (relief granted for violations of an expired permit); *Sierra Club v. Aluminum Co. of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y. 1984) (holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of an expired permit); *Pub. Interest Research Group of N.J. v. Carter-Wallace, Inc.*, 684 F. Supp. 115,121-22 (D.N.J. 1988) ("[l]imitations of an expired permit, when those limitations have been transferred unchanged to the newly issued permit, may be viewed as currently in effect").

3.1. Unauthorized Non-Storm Water Discharges from the Facility in Violation of Storm Water Permit Discharge Prohibition.

Except as authorized by Special Conditions D(1) of the Storm Water Permit, Discharge Prohibition A(1) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. The 2015 Permit includes the same discharge prohibition. *See* 2015 Permit, Discharge Prohibition III(B). Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit. *See* Storm Water Permit, Discharge Prohibition A(1); *see also* 2015 Permit, Discharge Prohibition III(B).

Information available to Coastkeeper and CERF indicates that unauthorized non-storm water discharges occur in DA2 at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges. For example, unauthorized non-storm water discharges occur at the Facility from the Facility's truck, vehicle, and bin washing activities. Facility Owners and/or Operators state that the washing area contains a berm to prevent wash water from discharging, but information available to Coastkeeper and CERF indicates that vehicles and bins track some wash water out of this bermed area upon exiting, and that the Facility's other BMPs are insufficient to prevent related non-storm water discharges. Non-storm water discharges resulting from washing and cleaning are not from sources that are listed among the authorized non-storm water discharges in Special Conditions D(1) of the Storm Water Permit and thus are always prohibited under the Storm Water Permit.

Coastkeeper and CERF put the Facility Owners and/or Operators on notice that the Storm Water Discharge Prohibition is violated each time unauthorized non-storm water is discharged from the Facility. *See* 1997 Permit, Discharge Prohibition D(1); *see also* 2015 Permit, Discharge Prohibition III(B). These discharge violations are ongoing and will continue until the Facility Owners and/or Operators develop and implement BMPs that prevent prohibited unauthorized non-storm water discharges or obtains separate NPDES permit coverage. Each time the Facility Owners and/or Operators discharge prohibited non-storm water in violation of Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Facility Owners and/or Operators have been in violation since May 3, 2013, and Coastkeeper and CERF will update the number and dates of violations when additional information becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since May 3, 2013.

3.2. Discharges of Polluted Storm Water from the Facility in Violation of Storm Water Permit Effluent Limitation.

Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve Best Available Technology Economically Achievable ("BAT") for toxic and non-conventional pollutants and Best Conventional Pollutant Control Technology ("BCT") for conventional pollutants. The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A).

Information available to Coastkeeper and CERF, including its review of publicly available information and observations, indicates BMPs that achieve BAT/BCT have not been developed and/or implemented at the Facility. Consistent with Coastkeeper and CERF's review of available information and direct observations, the analytical results of storm water sampling at the Facility demonstrate that the Facility Owners and/or

Operators have failed and continue to fail to develop and/or implement BAT/BCT, as required. Specifically, Facility discharges have exceeded EPA Benchmarks for numerous pollutants. EPA Benchmarks are relevant and objective standards for evaluating whether a permittee's BMPs achieve compliance with BAT/BCT standards as required by Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.[7] The table attached hereto as Exhibit 1 includes sample results of storm water discharges collected from the Facility. As demonstrated by the data in Exhibit 1 the Facility Owners and/or Operators have failed and continue to fail to develop and/or implement BMPs at the Facility as required to achieve compliance with the BAT/BCT standards. For example, the EPA Benchmark for TSS is 100 mg/L, and a storm water sample collected from the Facility in January 2017 exceeded the EPA Benchmark by over seven (7) times. *See* Exhibit 1. TSS increases water temperature and slows photosynthesis by aquatic plants, adversely affecting aquatic life.[8] Further, the EPA Benchmark for iron is 1 mg/L, and a storm water sample collected from the Facility in December 2014 exceeded the EPA Benchmark by over twenty-six (26) times. *Id.*

Coastkeeper and CERF put the Facility Owners and/or Operators on notice that the Storm Water Permit Effluent Limitation is violated each time storm water discharges from the Facility. *See, e.g.*, Exhibit 2 (setting forth dates of significant rain events).[9] These discharge violations are ongoing and will continue every time the Facility Owners and/or Operators discharge polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Each time the Facility Owners and/or Operators discharge polluted storm water in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Facility Owners and/or Operators have been in violation since May 3, 2013 and Coastkeeper and CERF will update the dates of violations when additional information and data become available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since May 3, 2013.

Further, Coastkeeper and CERF put the Facility Owners and/or Operators on notice that the 2015 Permit Effluent Limitation V(A) is an independent requirement that must be complied with, and that carrying out the iterative process triggered by

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[7] *See United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) Authorization to Discharge Under the National Pollutant Discharge Elimination System*, as modified effective February 26, 2009, Fact Sheet at 106; *see also*, 65 Federal Register 64839 (2000).
[8] *See US EPA Water: Monitoring and Assessment, 5.8 Total Solids*, found at https://archive.epa.gov/water/archive/web/html/vms58.html
[9] A significant rain event is defined by EPA as a rainfall event generating 0.1 inches or more of rainfall, which generally results in discharges at a typical industrial facility. Dates of significant rain events are measured at the Carlsbad McClellan Palomar Airport rain gauge. Coastkeeper and CERF will include additional dates of significant rain events when that information becomes available.

exceedances of the Numeric Action Levels ("NALs") listed at Table 2 of the 2015 Permit does not amount to compliance with Effluent Limitation V.A. Exceedances of the NALs demonstrate that a facility (such as the Facility) is among the worst performing facilities in the State. Moreover, the NALs do not represent technology-based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT. Thus, even if the Facility Owners and/or Operators are engaged in the NAL iterative process and submitted an Exceedance Response Action Plan(s) under Section XII of the 2015 Permit, the violations of Effluent Limitation V(A) described in this Notice Letter are ongoing and continuous.

3.3. Discharges of Polluted Storm Water from the Facility in Violation of Storm Water Permit Receiving Water Limitations.

Receiving Water Limitation C(2) of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable Water Quality Standard ("WQS").[10] The 2015 Permit includes the same receiving water limitation. *See* 2015 Permit, Receiving Water Limitation VI.A. Discharges that contain pollutants in excess of applicable WQS violate the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(2); 2015 Permit, Receiving Water Limitation VI(A).

Receiving Water Limitation C(1) of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment. The 2015 Permit includes the same receiving water limitation. *See* 2015 Permit, Receiving Water Limitation VI(B). Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment constitute violations of the Storm Water Permit Receiving Water Limitation. *See* 1997 Permit, Receiving Water Limitation C(1); 2015 Permit, Receiving Water Limitation VI(B).

Storm water sampling at the Facility demonstrates that discharges contain concentrations of pollutants that cause or contribute to a violation of an applicable WQS, and thus violate Receiving Water Limitation C(2) of the 1997 Permit or Receiving Water Limitation VI(A) of the 2015 Permit. For example, the WQS from the Basin Plan for Agua Hedionda Creek for iron is 0.3 mg/L. On December 12, 2014, the iron

[10] The Basin Plan designates Beneficial Uses for the Receiving Waters. Water quality standards are pollutant concentration levels determined by the state or federal agencies to be protective of designated Beneficial Uses. Discharges above water quality standards contribute to the impairment of Receiving Waters' Beneficial Uses. Applicable water quality standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38 ("CTR"), and water quality objectives in the Basin Plan. Industrial storm water discharges must strictly comply with water quality standards, including those criteria listed in the applicable basin plan. *See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).

concentration of storm water discharging from the Facility was reported as 26.5 mg/L, over eighty-eight (88) times above the maximum WQS for iron.

As explained herein, the Receiving Waters are impaired, and thus unable to support the designated Beneficial Uses, for some of the same pollutants discharging from the Facility, including total dissolved solids (TDS). Information available to Coastkeeper and CERF indicates that the Facility's storm water discharges contain elevated concentrations of these impairment causing pollutants. For example, a storm water sample collected from the Facility on December, 2, 2014 exceeded the EPA Benchmark for Electrical conductivity @ 25 Deg. C (i.e. specific conductance, or SC) by over seven (7) times. SC is a measure of the concentration of ions in the water from dissolved salts and inorganic materials such as alkalis, chlorides, sulfides and carbonate compounds, and it correlates directly and linearly with TDS. In fact, TDS levels are often calculated directly from SC readings. Elevated SC and TDS levels can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Receiving Waters. *See, e.g.,* Exhibit 1. Discharges of elevated concentrations of pollutants in the storm water from the Facility also adversely impact human health. These harmful discharges from the Facility are violations of the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(1); 2015 Permit, Receiving Water Limitation VI(B).

Coastkeeper and CERF put the Facility Owners and/or Operators on notice that Storm Water Permit Receiving Water Limitations are violated each time polluted storm water discharges from the Facility. *See, e.g.,* Exhibit 1. Each time discharges of storm water from the Facility cause or contribute to a violation of an applicable WQS, it is a separate and distinct violation of Receiving Water Limitation C(2) of the 1997 Permit, Receiving Water Limitation VI(A) of the 2015 Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Each time discharges of storm water from the Facility adversely impact human health or the environment, it is a separate and distinct violation of Receiving Water Limitation C(1) of the 1997 Permit, Receiving Water Limitation VI(B) of the 2015 Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). These discharge violations are ongoing and will continue every time contaminated storm water is discharged in violation of the Storm Water Permit Receiving Water Limitations. The Facility Owners and/or Operators have been in violation since May 3, 2013, and Coastkeeper and CERF will update the dates of violation when additional information and data becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since May 3, 2013.

Further, Coastkeeper and CERF put the Facility Owners and/or Operators on notice that Receiving Water Limitations are independent Storm Water Permit requirements that must be complied with, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the Receiving Water Limitations. The NALs do not represent water quality-based criteria relevant to determining whether an industrial facility has

caused or contributed to an exceedance of a WQS, or is causing adverse impacts to human health or the environment. Thus, even if the Facility Owners and/or Operators are engaged in the NAL iterative process and submitted an Exceedance Response Action Plan(s) under Section XII. of the 2015 Permit, the violations of the Receiving Water Limitations described in this Notice Letter are ongoing and continuous.

3.4. Failure to Develop, Implement, and/or Revise an Adequate Storm Water Pollution Prevention Plan.

The Storm Water Permit requires permittees to develop and implement a Storm Water Pollution Prevention Plan prior to conducting industrial activities. A permittee has an ongoing obligation to revise the SWPPP as necessary to ensure compliance with the Storm Water Permit. The specific SWPPP requirements of the 1997 Permit and the 2015 Permit are set out below.

3.4.1. 1997 Permit SWPPP Requirements.

Section A(1) and Provision E(2) of the 1997 Permit require discharges to have developed and implemented a SWPPP prior to beginning industrial activities that meets all of the requirements of the 1997 Permit. The objectives of the 1997 Permit SWPPP requirements are to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges from the Facility and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. *See* 1997 Permit, Section A(2). These BMPs must achieve compliance with the Storm Water Permit's Effluent Limitations and Receiving Water Limitations.

To ensure compliance with the Storm Water Permit, the SWPPP must be evaluated on an annual basis pursuant to the requirements of Section A(9) of the 1997 Permit, and must be revised as necessary to ensure compliance with the Storm Water Permit. 1997 Permit, Sections A(9) and (10). Sections A(3) – A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a site map showing the facility boundaries, storm water drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, areas of actual and potential pollutant contact, areas of industrial activity, and other features of the facility and its industrial activities (*see* 1997 Permit, Section A(4)); a list of significant materials handled and stored at the site (*see* 1997 Permit, Section A(5)); a description of potential pollutant sources, including industrial processes, material handling and storage areas, dust and particulate generating activities, significant spills and leaks, non-storm water discharges and their sources, and locations where soil erosion may occur (*see* 1997 Permit, Section A(6)).

Sections A(7) and A(8) of the 1997 Permit require an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective.

3.4.2. 2015 Permit SWPPP Requirements.

As with the SWPPP requirements of the 1997 Permit, Sections X(A) - (H) of the 2015 Permit require dischargers to have developed and implemented a SWPPP that meets all of the requirements of the 2015 Permit. *See also* 2015 Permit, Appendix 1. The objective of the SWPPP requirements are still to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. *See* 2015 Permit, Section X(C).

The SWPPP must include, among other things and consistent with the 1997 Permit, a narrative description and summary of all industrial activity, potential sources of pollutants, and potential pollutants; a site map indicating the storm water conveyance system, points of discharge, direction of flow, areas of actual and potential pollutant contact, nearby water bodies, and pollutant control measures; a description of the BMPs developed and implemented to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges necessary to comply with the Storm Water Permit; the identification of non-storm water discharges and the elimination of unauthorized non-storm water discharges; the location where significant materials are being shipped, stored, received, and handled, as well as the typical quantities of such materials and the frequency with which they are handled; a description of dust and particulate-generating activities; and the identification of individuals and their current responsibilities for developing and implementing the SWPPP. 2015 Permit, Section X(A)-(H).

Further, the 2015 Permit requires the discharger to evaluate the SWPPP on an annual basis and revise it as necessary to ensure compliance with the Storm Water Permit. 2015 Permit, Section X(A)-(B). Like the 1997 Permit, the 2015 Permit also requires that the discharger conduct an annual comprehensive site compliance evaluation that includes a review of all visual observation records, inspection reports and sampling and analysis results; a visual inspection of all potential pollutant sources for evidence of, or the potential for, pollutants entering the drainage system; a review and evaluation of all BMPs to determine whether the BMPs are adequate, properly implemented and maintained, or whether additional BMPs are needed; and a visual inspection of equipment needed to implement the SWPPP. 2015 Permit, Section X(B) and Section XV.

3.4.3. The Facility Owners and/or Operators Have Violated and Continue to Violate the Storm Water Permit SWPPP Requirements.

The Facility Owners and/or Operators have conducted and continue to conduct operations at the Facility with an inadequately developed and/or implemented SWPPP. For example, information available to Coastkeeper and CERF indicates that the Facility site map has never included all the information required by the Storm Water Permit, including, but not limited to, all storm water discharge locations, all industrial activity and associated pollutant sources, and all BMPs.

The Facility Owners and/or Operators have failed and continue to fail to develop and/or implement a SWPPP that contains BMPs to prevent the exposure of pollutants and pollutant sources to storm water and the subsequent discharge of polluted storm water from the Facility, as required by the Storm Water Permit. The Facility Owners and/or Operators have also failed to adequately conduct a pollutant source assessment and have not therefore identified pollutants and pollutant sources that require BMP development and implementation. For example, Pollutant Source Assessment Table 2.1.a of the Palomar 2016 SWPPP indicates that E. Coli and Enterococcus (measured as Indicator Bacteria, Enterococcus, Fecal Coliform, and Total Coliform) are "Present at Facility as part of Industrial Activity," and "Possibly in trash," yet paradoxically states that there is no potential to discharge such pathogens. Facility Owners and/or Operators have not submitted any storm water sampling results for these pathogens even though Agua Hedionda creek is impaired for enterococcus and fecal coliform. Information available to Coastkeeper and CERF indicates that similarly situated waste transfer and recycling facilities have a potential to discharge such pathogens, and that absent BMPs tailored to address them, such facilities often discharge pathogens in quantities that exceed EPA Benchmarks and applicable WQS.

Table 2.1.a of the Palomar 2016 SWPPP also indicates that copper is present at the facility and that its source is "Recycled materials storage," yet the Facility Owners and/or Operators have not submitted any testing for copper. The same table denies the presence of numerous other industrial pollutants that are often found in storm water discharging from similarly situated waste transfer and recycling facilities, including ammonia as nitrogen, dissolved oxygen, manganese, selenium, nitrogen, phosphorus, turbidity, and total dissolved solids. The same table fails to even mention other potential pollutants that are commonly present in storm water discharged from similarly situated facilities, including chemical oxygen demand (originating in liquid residues from recyclable materials), and metals such as aluminum, lead, zinc, and iron (originating in recyclable materials, construction and demolition, solid waste, metal roofs, and equipment, bins, and trucks). The failure to mention or consider iron is particularly egregious considering that the Facility previously measured iron exceedances of twelve (12) times and twenty-six times (26) EPA Benchmarks in the 2013-2014 and 2014-2015 monitoring years, respectively. Iron exceedances in the 2013-2014 monitoring year measured forty (40) times the WQS for iron of .3mg/L, and iron exceedances in the 2014-

2015 monitoring years measured eighty-eight (88) times the WQS for iron. Subsequent to these measured exceedances, the Facility Owners and/or Operators discontinued testing for iron and failed to address iron in subsequent SWPPPs.

The SWPPP inadequacies are documented by the continuous and ongoing discharge of storm water containing pollutant levels that exceed EPA Benchmarks and applicable WQS. *See, e.g.,* Exhibit 1.

The Facility Owners and/or Operators have also failed to revise the Facility's SWPPP to ensure compliance with the Storm Water Permit. Despite the significant concentrations of pollutants in the Facility's storm water discharges each year, information available to Coastkeeper and CERF indicates that the Facility SWPPPs have not significantly changed throughout the Facility Owners and/or Operators' industrial operations at the Facility, and have not been revised to include additional BMPs to adequately eliminate or reduce these pollutants, as required by the Storm Water Permit. For example, Table 2.1.a of the 2015 Palomar SWPPP lists gross pollutants, trace metals, oil and grease, hydrocarbons, trash, debris, and TSS as pollutants associated with industrial activities in DA2, potentially exposed to storm water through tracking, leaks, spills, debris from vehicles, maintenance activities, and debris from container maintenance. Though the 2015 Palomar SWPPP addresses structural BMPs for the northern and eastern portions of DA2, the entire main bin and container storage area in DA2 south of the main building drains directly towards SW-2 and discharges off site without passing through any advanced structural BMPs that might filter or settle out pollutants in storm water that comes into contact with the bins and containers stored there and the vehicles passing through. The 2016 Palomar SWPPP also failed to include any advanced structural BMP near SW-2 that would address this portion of DA2. Facility Owners and/or Operators have been aware that this area of DA2 is a potential source of pollutants, as acknowledged in section 3.1.3.1 of the December 2017 Level 2 Action Plan that "waste bin storage and maintenance activities may also be a source of TSS," but the SWPPP has not been adequately revised to address this area.

In fact, the Facility's SWPPPs have not substantively changed even after the Facility entered Level 1 status for discharging storm water with levels of pollutants that exceed the 2015 Permit's NALs.[11] The 2015 Permit requires revisions to SWPPPs to identify what BMPs will be improved, and/or if additional BMPs must be developed and implemented to prevent further exceedances of the NALs, or otherwise comply with the Storm Water Permit. *See* 2015 Permit, Section XII(C). The Palomar 2015 SWPPP (developed prior to the Facility entering Level 1 status) is essentially identical to the Palomar 2016 SWPPP, which was submitted as a "revised" SWPPP after the Facility entered Level 1 status.

[11] Explanation of how a permittee enters Level 1 status is set forth below in Section 3.7.

For example, section 5.5.4 of the Palomar 2015 SWPPP indicates that, "If identified deficiencies require design changes, including additional BMPs, the implementation of changes will be completed as soon as possible, and the SWPPP will be amended to reflect the changes." Despite the repeated, continuous, and numerous ongoing discharge of storm water containing pollutant levels that exceed EPA Benchmarks and applicable WQS, not to mention NAL exceedances, the Palomar 2016 SWPPP merely repeats the same 5.5.4 language; it fails to include any analysis into the deficiencies in existing BMPs that caused the NAL exceedance or plans to specifically address those deficiencies. Section 6.3 of the CWM 2016 SWPPP states that "site management is currently exploring the option of installing a structural treatment control BMP at SW-2 to further reduce sediment at this discharge point," but fails to go into any specifics or commit to a firm timeline. *See* Palomar 2015 SWPPP, Section 5.5.4; *see also* Palomar 2016 SWPPP, Section 5.5.4; *see also* CWM 2016 SWPPP, Section 6.3; *see also* Exhibit 1 (table of Facility sample results compared to EPA Benchmarks and WQS).

Accordingly, the Facility Owners and/or Operators have failed and continue to fail to adequately develop, implement, and/or revise a SWPPP, in violation of SWPPP requirements of the Storm Water Permit. Every day the Facility operates with an inadequately developed and/or implemented SWPPP, and/or with an improperly revised SWPPP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit SWPPP requirements since at least May 3, 2013. These violations are ongoing, and Coastkeeper and CERF will include additional violations when information becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since May 3, 2013.

3.5. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program.

The Storm Water Permit requires permittees to develop and implement a storm water monitoring and reporting program ("M&RP") prior to conducting industrial activities. A permittee has an ongoing obligation to revise the M&RP as necessary to ensure compliance with the Storm Water Permit. The specific M&RP requirements of the 1997 Permit and the 2015 Permit are set out below.

3.5.1. 1997 Permit M&RP Requirements.

Section B(1) and Provision E(3) of the 1997 Permit require facility operators to develop and implement an adequate M&RP prior to the commencement of industrial activities at a facility, that meets all of the requirements of the Storm Water Permit. The primary objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the Storm Water Permit's Discharge

Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 1997 Permit, Section B(2).

The M&RP must therefore ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility, and must be evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *Id.* Sections B(3) – B(16) of the 1997 Permit set forth the M&RP requirements. Specifically, Section B(3) requires dischargers to conduct quarterly visual observations of all drainage areas within their facility for the presence of authorized and unauthorized non-storm water discharges. Section B(4) requires dischargers to conduct visual observations of storm water discharges from one storm event per month during the Wet Season.[12] Sections B(3) and B(4) further require dischargers to document the presence of any floating or suspended material, O&G, discolorations, turbidity, odor, and the source of any pollutants. Dischargers must maintain records of observations, observation dates, locations observed, and responses taken to eliminate unauthorized non-storm water discharges and to reduce or prevent pollutants from contacting non-storm water and storm water discharges. *See* 1997 Permit, Sections B(3) and B(4). Dischargers must revise the SWPPP in response to these observations to ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility. *Id.*, Section B(4). Sections B(5) and B(7) of the 1997 Permit require dischargers to visually observe and collect samples of storm water from all locations where storm water is discharged.

Sections B(5) and B(7) of the 1997 Storm Water Permit require dischargers to visually observe and collect samples of storm water from all drainage areas and discharge locations where storm water is discharged. Under Section B(5) of the Storm Water Permit, a permittee is required to collect at least two (2) samples from each discharge location at the facility during the Wet Season. Storm water samples must be analyzed for TSS, pH, SC, total organic carbon or O&G, and other pollutants that are likely to be present in the facility's discharges in significant quantities. *See* Storm Water Permit, Section B(5)(c). The Storm Water Permit requires facilities classified as SIC code 4953 to also analyze storm water samples for iron. *Id.*; *see also* 1997 Permit, Table D, Sector L. Finally, permittees must identify and use analytical method detection limits sufficient to determine compliance with the 1997 Permit's monitoring program objectives and specifically, the Effluent Limitations and Receiving Water Limitations. 1997 Permit, Section B(10)(iii).

3.5.2. 2015 Permit M&RP Requirements.

As with the 1997 M&RP requirements, Sections X(I) and XI(A)-XI(D) of the 2015 Permit require facility operators to develop and implement an adequate M&RP that meets all of the requirements of the 2015 Permit. The objective of the M&RP is still to

[12] Wet Season is a term from the 1997 Permit and is defined as October 1 through May 31. 1997 Permit, Section B(4)(a).

detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the 2015 Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 2015 Permit, Section XI. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the facility, and is evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *See id.*

As an *increase* in observation frequency to the 1997 Permit, Section XI(A) of the 2015 Permit requires all visual observations at least once each month, and at the same time sampling occurs at a discharge location. Observations must document the presence of any floating and suspended material, O&G, discolorations, turbidity, odor and the source of any pollutants. 2015 Permit, Section XI(A)(2). Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges. 2015 Permit, Section XI(A)(3).

As an *increase* in frequency of monitoring requirements, Section XI(B)(1-5) of the 2015 Permit requires permittees to collect storm water discharge samples from a qualifying storm event[13] as follows: 1) from each drainage area at all discharge locations, 2) from two (2) storm events within the first half of each Reporting Year[14](July 1 to December 31), 3) from two (2) storm events within the second half of each Reporting Year (January 1 to June 30), and 4) within four hours of the start of a discharge, or the start of facility operations if the qualifying storm event occurs within the previous 12-hour period. The 2015 Permit requires, among other things, that permittees must submit *all sampling* and analytical results for all samples via SMARTS within 30 days of obtaining all results for each sampling event. 2015 Permit, Section XI(B)(11) (emphasis added).

The parameters to be analyzed are also consistent with the 1997 Permit, however, the 2015 Permit no longer requires SC to be analyzed. Specifically, Section XI(B)(6)(a)-(b) of the 2015 Permit requires permittees to analyze samples for TSS, O&G, and pH. Section XI(B)(6)(c)-(d) of the 2015 Permit requires permittees to analyze samples for pollutants associated with industrial activities. Table 1 of the 2015 Permit specifically requires SIC Code 4953 facilities, to analyze for iron. Section XI(B)(6)(e) of the 2015 Permit also requires dischargers to analyze storm water samples for additional applicable industrial parameters related to receiving waters with a Clean Water Act Section 303(d) listed impairment(s), or approved Total Maximum Daily Loads. Finally, permittees must identify and use analytical method detection limits sufficient to determine compliance with the 2015 Permit, including the Effluent Limitations, Receiving Water Limitations.

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[13] The 2015 Permit defines a qualifying storm event as one that produces a discharge for at least one drainage area, and is preceded by 48-hours with no discharge from any drainage areas. 2015 Permit, Section XI(B)(1).

[14] A Reporting Year replaced the 1997 permit term Wet Season, and is defined as July 1 through June 30. 2015 Permit, Findings, ¶ 62(b).

See 2015 Permit, Section XI(B)(6)(e). "Test methods with lower detection limits may be necessary when discharging to receiving waters with 303(d) listed impairments or TMDLs." *Id.* at Section XI(B)(6)(e).

3.5.3. The Facility Owners and/or Operators Have Violated and Continue to Violate the Storm Water Permit M&RP Requirements.

The Facility Owners and/or Operators have been and continue to conduct operations at the Facility with an inadequately developed, implemented, and/or revised M&RP. Specifically, the Facility Owners and/or Operators have failed and continue to fail to collect storm water samples from all discharge locations, to analyze samples for all required parameters, to collect samples for the requisite number of QSEs and to conduct visual observations and monitoring as required by the Storm Water Permit. In addition, many method detection limits used by the Facility Owners and/or Operators were not low enough to determine compliance with the Storm Water Permit's Effluent Limitations and Receiving Water Limitations. *See e.g.* Exhibit 1.

First, the Facility Owners and/or Operators have failed and continue to fail to develop and/or implement an M&RP that requires storm water samples be collected from all discharge locations at the Facility. Based on the Facility SWPPPs, Annual Reports, and Coastkeeper and CERF's observations, the Facility Owners and/or Operators have never collected storm water samples from all discharge locations at the Facility. While Section B(7)(d) of the 1997 Permit and Section XI(C)(4) of the 2015 Permit allow permittees to reduce the number of locations to be sampled, there is no indication that the Facility Owners and/or Operators have complied with the requirements of Section B(7)(d) of the 1997 Permit or Section XI(C)(4) of the 2015 Permit to justify sampling a reduced number of discharge locations at the Facility. For example, CWM has acknowledged that "A small portion of public access road sheet flows west [from DA1] and discharges off-site via sheet flow." *See* 2016 CWM SWPPP, Section 3.3. The road referred to is unsampled and lacks any BMPs to prevent run-on/run-off or track-in/track-out from the industrial areas in DA1. Also, information available to Coastkeeper and CERF indicates that the southernmost driveway (from DA3) is another unsampled discharge location at the Facility. On January 17, 2018, the City of Carlsbad reported "Liquid in street exiting WM Transfer Station" via this driveway, and storm water inspector Jacob Feil determined that the Facility failed an inspection because of "Accidental discharge of hydraulic fluid to street." *See* City of Carlsbad Inspection Worksheet (SWI-046209-2018) and associated records. City photos of the incident show fluid covering Orion Road as well as the southernmost driveway from the Facility, which is unsampled and which serves as a point of egress for vehicles that regularly pass and track pollutants through DAs 2 and 3 as they exit the site. The January 17, 2018 vehicle leak and/or track-out is evidence that this driveway is another unsampled discharge location from the Facility.

Second, the Facility Owners and/or Operators fail to conduct the required storm water analysis. As a waste and metal recycling, storage and transfer facility, the Facility Owners and/or Operators should be analyzing samples for, at a minimum, the following pollutants in addition to the parameters currently analyzed: iron, copper, aluminum and zinc, SC, and bacteria. The Facility Owners and/or Operators analyzed samples for iron and SC in the 2013/2014 Wet Season and 2014/2015 Wet Season, and the corresponding lab reports documented elevated levels of both parameters in the Facility's discharges. *See* Exhibit 1. However, during the 2015/2016 monitoring year, 2016/2017, and 2017/2018 monitoring year, Facility Owners and/or Operators failed to analyze Facility storm water samples for iron, SC, and numerous other pollutants that are likely to be present in the facility's discharges in significant quantities. Also, Facility Owners and/or Operators identified copper and bacteria as pollutants present at the Facility as part of industrial operations, but have never tested for those pollutants.

In addition, as indicated in the Palomar 2016 SWPPP, bacteria is associated with operations at the Facility including waste collection and storage, and pollutant sources such as the waste and recycling bins. The Palomar 2016 SWPPP identifies that this pollutant is "Present at Facility as part of Industrial Activity", and "possibly in trash." *See* Palomar 2016 SWPPP, Table 2.1.a. However, the Palomar 2016 SWPPP fails to acknowledge the impairment of the Receiving Waters for this pollutant, and also erroneously states that there is no potential to discharge bacteria. *Id.* Neither Palomar nor CWM has ever submitted bacterial sampling results to SMARTs.

Further, the sample results for pH that Facility Owners and/or Operators submitted to SMARTs for the 2016/2017 monitoring year are highly suspect, as they show zero variability between sample locations (SW-1, SW-2, and SW-3) and are whole numbers. Palomar consistently submitted the exact same value (6.00) twelve (12) times in a row, while CWM submitted 6.00 eleven (11) times and 5.0 once. For comparison purpose, CWM's pH readings prior to the 2016/2017 monitoring year measured 7.25, 6.69, 6.94, and Palomar's pH readings prior to the 2016/2017 monitoring year had measured 7.1, 8.1, 7.9, 8.4, 8.41, 7.99, and 8.76. As such, the 2016/2017 results are likely indicative of improper monitoring and sampling technique. *See* Exhibit 1.

Third, the Facility Owners and/or Operators fail to report all storm water sample results to the Regional Board. Specifically, on more than one occasion, the Facility Owners and/or Operators analyzed storm water samples collected at the Facility for pollutants associated with its industrial activity, but either redacted the results before submitting them to the SMARTS database or failed to submit them to SMARTS in violation of the Storm Water Permit requirement to submit all sample data to the regulatory agency. *See* 2015 Permit, Section XI(B)(11). For example, on December 11, 2015, December 22, 2015, and January 5, 2016, the Facility Owners and/or Operators analyzed the Facility's storm water discharges for TSS, returning readings which averaged 700 mg/L - seven (7) times the EPA Benchmark - but failed to submit this data to SMARTS. *See* Palomar Exceedance Response Action Level 1 Evaluation and Report,

Section 3. In addition, the Facility Owners and/or Operators failed to submit ad hoc reports as required and report pH results for the January 9, 2018 monitoring event.

The Facility Owners and/or Operators further failed to take the required four samples during the 2017/2018 reporting period. 2015 Permit, §XI.B.2 . There were numerous qualifying storm events during this period. *See* Exhibit 2.

Finally, the Storm Water Permit requires dischargers to conduct visual observations of storm water discharges, of authorized and unauthorized non-storm water discharges, and of BMPs. Based on information available to Coastkeeper and CERF, including Annual Reports and City inspection reports, the Facility Owners and/or Operators fail to consistently, and/or adequately, conduct the required discharge observations and monitoring of BMPs.

Accordingly, the Facility Owners and/or Operators have failed and continue to fail to adequately develop, implement, and/or revise a M&RP, in violation of M&RP requirements of the Storm Water Permit. Every day the Facility operates with an inadequately developed and/or implemented M&RP, or with an improperly revised M&RP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit M&RP requirements since at least May 3, 2013. These violations are ongoing, and Coastkeeper and CERF will include additional violations when information becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since May 3, 2013.

3.6. <u>Failure to Comply with the Storm Water Permit's Reporting Requirements</u>.

Section B(14) of the 1997 Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section B(14) requires that the Annual Report include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any activities required, and other information specified in Section B(13). The 2015 Permit includes the same annual reporting requirements but changed the Annual Report due date to July 15. *See* 2015 Permit, Section XVI.

The Facility Owners and/or Operators have failed and continue to fail to submit Annual Reports that comply with the Storm Water Permit reporting requirements. For example, in each Annual Report since the filing of the 2013-2014 Annual Reports, the Facility Owners and/or Operators certify that: (1) a complete Annual Comprehensive Site Compliance Evaluation was conducted as required by the Storm Water Permit; (2) the SWPPP's BMPs address existing potential pollutant sources; and (3) the SWPPP complies with the Storm Water Permit, or will otherwise be revised to achieve

compliance. However, information available to Coastkeeper and CERF indicates that these certifications are erroneous. For example, storm water samples collected from the Facility contain concentrations of pollutants above EPA Benchmarks and WQSs, thus demonstrating that the Facility BMPs do not adequately address existing potential pollutant sources. Further, as discussed herein, the Facility's SWPPPs do not include many elements required by the Storm Water Permit, and thus it is erroneous to certify that the SWPPPs comply with the Storm Water Permit.

In addition, the facility operator must report any noncompliance with the Storm Water Permit at the time that the Annual Report is submitted, including 1) a description of the noncompliance and its cause, 2) the period of noncompliance, 3) if the noncompliance has not been corrected, the anticipated time it is expected to continue, and 4) steps taken or planned to reduce and prevent recurrence of the noncompliance. 1997 Permit, Section C(11)(d); 2015 Permit, Section XVI(B)(2). The Facility Owners and/or Operators have not accurately reported non-compliance, as required. Rather, for example, as reported in both CWM's and Palomar's 2015-2016 Annual Reports, Facility Owners and/or Operators did not submit samples for the required number of Qualifying Storm Events during the reporting year for all discharge locations. Also, Palomar indicated in its 2015-2016 Annual Report that it did not include pollutants from the impaired watershed list in its SWPPP pollutant source assessment.

Finally, as discussed herein, information available to Coastkeeper and CERF indicates that the Facility Owners and/or Operators have failed to report all storm water sample results. Specifically, storm water samples submitted to SMARTS failed to include sampling data that Palomar later cited in its September 2016 Exceedance Response Action Level 1 Evaluation and Report, specifically, December 2015 and January 2016 TSS readings averaging 700 mg/L, or seven (7) times the EPA Benchmark.

Given that the Facility Owners and/or Operators have submitted incomplete and/or incorrect Annual Reports that fail to comply with the Storm Water Permit, the Facility Owners and/or Operators are in daily violation of the Storm Water Permit. Every day the Facility Owners and/or Operators conduct operations at the Facility without reporting as required by the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's reporting requirements every day since at least May 3, 2013. These violations are ongoing, and Coastkeeper and CERF will include additional violations when information becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since May 3, 2013.

3.7. <u>Failure to Comply with Level 1 Exceedance Response Action Requirements</u>.

When the 2015 Permit became effective on July 1, 2015, all permittees were in "Baseline status" for all parameters listed in Table 2 of the 2015 Permit. *See* 2015 Permit,

Section XII(B). A permittee's Baseline status for any given parameter changes to "Level 1 status" if sampling results indicate an NAL exceedance for that same parameter. *See id.*, Section XII(C) (there are annual average NALs, and instantaneous maximum NALs). Level 1 status commences on July 1 following the Reporting Year during which the exceedance(s) occurred, and the discharger enters the Exceedance Response Action ("ERA") process. *See id.* The ERA process requires the discharger to conduct an evaluation, with the assistance of a Qualified Industrial Storm Water Practitioner ("QISP"), of the industrial pollutant sources at the facility that are or may be related to the NAL exceedance(s) by October 1 following commencement of Level 1 status. *See id.* at Section XII(C)(1)(a)-(b). The evaluation must include the identification of the "corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of the General Permit." *See id.* at Section XII(C)(1)(c). "Although the evaluation may focus on the drainage areas where the NAL exceedance(s) occurred, all drainage areas shall be evaluated." *Id.*

Based upon this Level 1 status evaluation, the permittee is required to, as soon as practicable but no later than January 1 following commencement of Level 1 status, prepare a Level 1 ERA Report. *See id.*, Section XII(C)(2). The Level 1 Report must be prepared by a QISP and include a summary of the Level 1 ERA evaluation and a detailed description of the SWPPP revisions and any additional BMPs for each parameter that exceeded an NAL. *See id.*, Section XII(C)(2)(a)(i)-(ii). The SWPPP revisions and additional BMP development and implementation must also be completed by January 1, and the Level 1 status discharger is required to submit via SMARTS the Level 1 ERA Report certifying the evaluation has been conducted, and SWPPP revisions and BMP implementation have been completed. *Id.* the certification also requires the QISP's identification number, name, and contact information (telephone number, e-mail address) no later than January 1 following commencement of Level 1 status. *See id.* at Section XII(C)(2)(a)(iii). A permittee's Level 1 status for a parameter will return to Baseline status if a Level 1 ERA report has been completed, all identified additional BMPs have been implemented, and results from four (4) consecutive qualified storm events that were sampled subsequent to BMP implementation indicate no additional NAL exceedances for that parameter. *See id.* at Section XII(C)(2)(b). A permittee will enter a Level 2 status if there is an NAL exceedances of the same parameter when the discharger is in Level 1 status. *See id.* at Section D.

The Facility Owners and/or Operators entered Level 1 status for TSS based on NAL exceedances during the 2015-2016 Reporting Year. In September 2016, Facility Owners and/or Operators submitted an ERA Level 1 report that failed to sufficiently address TSS exceedances. Facility Owners and/or Operators entered ERA Level 2 status on July 1, 2017 based on continued NAL exceedances during the 2016-2017 Reporting Year. For example, the annual average of storm water samples collected at the Facility for TSS during the 2015-2016 reporting year was 847 mg/L—more than 8 (eight) times over the annual NAL for TSS of 100 mg/L. *See* Palomar Transfer Station, Inc. - Level 2

Action Plan, Section 3. The annual average for TSS during the 2016-2017 Reporting Year was 226, over twice the annual NAL for TSS of 100 mg/L. *Id.*

Despite the exceedances resulting in Level 1 status, the Facility Owners and/or Operators failed to conduct an adequate Level 1 status evaluation to identify additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances at the Facility. The evaluation supposedly included a review of the SWPPP, the M&RP, BMPs and the Facility site map and recommended several enhanced BMPs, yet based on the evaluation, the Level 1 ERA Report "did not identify deficiencies with the site SWPPPs". *See e.g.* TSS Level 1 ERA Report at 3. The Report also stated that "additional investigation and/or monitoring will not be necessary to identify the potential pollutants source." *Id* at 4. The Facility Owners and/or Operators have also failed to submit an adequate ERA Report and have not adequately revised their SWPPPs detailing necessary additional BMPs to prevent future NAL exceedances, as required by the Storm Water Permit. Thus, the Facility Owners and/or Operators have failed and continue to fail to comply with Section XII of the 2015 Permit.

In the Level 1 ERA Report, the discussion of NAL exceedances for TSS at the Facility is inadequate. For example, rather than conducting an evaluation to identify the BMPs implemented at the Facility that correspond to the NAL exceedances at the Facility, the TSS Level 1 ERA Report notes that probable sources of TSS at the Facility include "vehicle traffic, truck traffic, non-paved parking area, industrial activity, truck movement around the site, background from slopes." TSS Level 1 ERA Report at page 4. The Report fails to consider the impact of storm water coming into contact with vehicles and containers in the bin storage area in the southern portion of DA2, however, and fails to make any recommendation for an advanced BMP at that location, despite the fact that TSS readings at SW-2 were on average higher than those from any other sample location. In general, the Level 1 ERA Report lacks the required detail and site-specific evaluation and analysis required by the 2015 Permit. Accordingly, the Level 1 ERA Report fails to meet the requirements of Section XII(C) of the 2015 Permit.

As a result of the Facility Owners and/or Operators failure to conduct an adequate Level 1 status evaluation or submit a Level 1 ERA Report that complies with the Storm Water Permit, the Facility entered Level 2 status on July 1, 2017. In December 2017, Facility Owners and/or Operators submitted a Level 2 ERA Report to address the continued TSS exceedances. It states that a "BioClean Kraken system is currently in design," "tentatively scheduled to be completed and ready to evaluate for effectiveness by the 2018 to 2019 MY," and that "All flows from SW-1, SW-2, and SW-3 will be routed to the Kraken unit and be treated before discharging from the site." Appendix C, which details the Kraken's technical specifications, claims that it will remove 89% of TSS. As a result of the Facility Owners and/or Operators failure to conduct the required QSE sampling during the 2017/2018 reporting period, limited data is available to assess the effectiveness of the proposed BMPs. However, during the one QSE sampled, two of the three identified discharge points had TSS levels above the NAL. Because this was the

only QSE sampled during the 20107/2018, the Facility's annual average for TSS will once again exceed the NAL.

Every day the Facility Owners and/or Operators fail to submit and implement an adequate Level 1 ERA Report is a separate and distinct violation of the 2015 Permit and Section 301(a) of the Clean Water Act. (33 U.S.C. § 1311(a)). These violations are ongoing and the Facility Owners and/or Operators will continue to be in violation every day they fail to revise, submit and implement an appropriate Level 2 ERA Report.

4. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of $37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009 and $51,570.00 per day per violation for violations that occurred after November 2, 2015.

In addition to civil penalties, Coastkeeper and CERF will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), Coastkeeper and CERF will seek to recover its litigation costs, including attorneys' and experts' fees.

5. CONCLUSION

Coastkeeper and CERF are willing to discuss effective remedies for the violations described in this Notice Letter. However, upon expiration of the 60-day notice period, Coastkeeper and CERF will file a citizen suit under Section 505(a) of the Clean Water Act for the Facility Owners and/or Operators' violations of the Storm Water Permit.

If you wish to pursue settlement discussions please contact Coastkeeper and CERF's legal counsel:

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